THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.11061 OF 2007

Date: 03.12.2007

Between:

P.Bala Subrahmaneswara Rao

. . .Petitioner

AND

The Land Acquisition Officer and
Revenue Divisional Officer,
Bandar and others

. . .Respondents

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.11061 OF 2007

ORDER:

At the interlocutory stage, with the consent of the learned counsel for the parties, the writ petition itself is being disposed of.

This writ petition is filed for a writ of mandamus to declare notification, dated 01.05.2007 issued under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act') where under an extent of Ac.0.03 cents situated in Survey No.582/1, Kokkilagadda Village, Mopidevi Mandal, Krishna District, belonging to the petitioner is proposed to be acquired.

Heard Sri G.Narasimha Rao, learned counsel for the petitioner, learned Assistant Government Pleader for Land Acquisition and Sri Ravi Kondaveeti for respondent No.5.

A perusal of notification, dated 01.05.2007 shows that urgency clause under Section 17(4) of the Act is invoked and enquiry under Section 5A of the Act is dispensed with. However, despite the same, respondent No.1 issued notice in Form 3 requiring the petitioner to submit his objections on or before 23.05.2007 and it is further indicated that the objections, if any, filed by the petitioner will be enquired into on 24.05.2007.

Learned counsel for the petitioner stated that in view of said notice, the petitioner filed his objections and that respondent No.1 has

not so far held the enquiry into the objections filed by the petitioner. The learned counsel invited my attention to paragraph 5 of the written statement in O.S.No.84 of 2001 on the file of Principal Junior Civil Judge, Avanigadda, filed by Assistant Engineer, Mandal Parishad, Mopidevi, wherein it is mentioned that they never intended to form road in any part of the plaint schedule property and submitted that having taken such a specific stand, the respondents have now come out with the impugned proposals for acquiring his land. The learned counsel further submitted that the land, which is proposed to be acquired, is part of the rice mill belonging to him and if the same is acquired, it will deny the access to the rice mill rendering the same useless.

Learned Assistant Government Pleader says that though the notification issued under Section 4(1) of the Act indicates that enquiry under Section 5A of the Act is dispensed with, in view of change of mind of the respondents as evident from Form 3 notice issued to hold enquiry under Section 5A of the Act, the petitioner has no cause of action to file the present writ petition at this stage and that the objections filed by him will be objectively considered after giving him an opportunity of personal hearing and disposed of.

Sri Ravi Kondaveeti, learned counsel for respondent No.4 submitted that since construction of a bridge over the canal is very much required for transportation of food grains from the fields of farmers, the said bridge cannot be put to use without an approach road and, therefore, acquisition of petitioner's land has become imminent. He further submitted that since the proposed acquisition is for a public purpose, the petitioner cannot object to its acquisition.

I have carefully considered the respective submissions of the

learned counsel for the parties.

As admitted by the petitioner, notice for enquiry under Section 5A of the Act has been issued though the notification under Section 4(1) of the Act formally dispensed with such an enquiry. It is, therefore, deemed that the part of notification, dated 01.05.2007, where under urgency clause under Section 17(4) of the Act is invoked is waived by the respondents. It is hence incumbent upon respondents 1 and 2 to hold enquiry under Section 5A of the Act.

I am, therefore, of the opinion that in view of availability of effective channel to the petitioner to ventilate his grievance against the proposed acquisition, this writ petition is premature. Whether the petitioner will be denied the use of rice mill on account of acquisition of his property is correct or not is a matter which is required to be adjudicated by the respondents in the enquiry to be held under Section 5A of the Act. In the event the respondents take a decision adverse to the petitioner, he is left free to avail appropriate remedies.

Subject to the above observations, the writ petition is disposed of.

C.V.NAGARJUNA REDDY, J

3rd DECEMBER, 2007

Note: furnish c.c. in one week.

B/o

kvni